

REMARKS

The present application is directed to compositions and methods for attenuation of cancer in a mammal by administering to the mammal Group B β -hemolytic *Streptococci* toxin receptor or Group B β -hemolytic *Streptococci* toxin receptor peptide. Prior to this Response, Claims 1, 4, 5, 8-10, 15, 16, 31, 33-38, 40-42, 45, 46 and 59-92 were pending. Claims 1, 4, 15, 16, 33-38, 40, 59-61, 64, 72-78, 81 and 89-92 were under prosecution. In this Response, applicant cancels Claims 31-38, 40-46, 72-88, 81, 90 and 92, amends Claims 1, 4, 5, 8-10, 15, 59, 60, 89 and 90, and adds new Claims 93 and 94. The amendments and the new claims do not add any new matter and are supported throughout the application, as filed. In particular, some of the amendments to Claim 1 are supported on p. 20, lines 5-7, of International Patent Publication WO 00/05375, which is incorporated by reference into the present application. Claims 1, 4, 5, 8-10, 15, 16, 59-71, 89, 91, 93 and 94 will be pending upon entry of the amendments.

Telephone Interviews

Applicant thanks the Examiner for the telephone interviews on June 27, 2008, and September 2, 2008, when the undersigned applicant's representative and the Examiner discussed claim objections, claim rejections and claim amendments to overcome the rejections. In particular, the claim amendments presented in this response are based on the discussion during the telephone interviews.

Priority

The Examiner asserts that Claims 1, 4, 15, 16, 33-38, 40, 59-61, 64, 72-78, 81 and 89-92 do not properly benefit from the filing dates of the priority documents, as applicant claimed, because the claims are rejected under 35 U.S.C. §112, first paragraph, "as lacking adequate written description and a sufficiently enabling disclosure." Applicant asserts that the claim amendments submitted in the present Response overcome the rejections under 35 U.S.C. §112, first paragraph. The Response therefore renders moot the Examiner's objection to the claim of priority. Applicant asserts that the claims,

as pending after the present Response, properly claim the benefit of the earlier filing date of Provisional Application No. 60/179,870, filed February 2, 2000.

Objections to Claims

The Examiner objects to Claims 59-61, 72-78, and 89-92 as directed in the alternative to the non-elected species. Applicant cancels Claims 72-78, 90 and 92, thereby rendering moot the objection to these claims. Applicant requests examination of the pending claims under consideration, including the linking claims, with regard to the elected species. During the telephone interview on June 27, 2008, the Examiner identified at least then pending Claim 1 as a linking claim. The amendments to Claim 1 presented in this Response are based on the Examiner's suggestions during September 2, 2008, telephone interview. Once all the claims directed to the elected species are found allowable, applicant requests all the claims, including those previously withdrawn from consideration as directed to non-elected species, to be fully examined for patentability, as discussed in MPEP 809.

Rejection of Claims under 35 U.S.C. §112, Second Paragraph

The Examiner rejects Claims 31-38, 40, 72-78, 81, 90 and 92 under 35 U.S.C. §112, second paragraph, as indefinite, asserting that they recite the limitation that lacks antecedent basis. Applicant cancels the claims, thereby rendering the rejection moot. Applicant requests withdrawal of the rejection.

Rejection of Claims under 35 U.S.C. §112, First Paragraph

The Examiner rejects Claims 1, 4, 15, 16, 31, 33-38, 40, 59-61, 64, 72-78, 81 and 89-92, under 35 U.S.C. §112, first paragraph, asserting insufficient enablement. Applicant cancels Claims 31-38, 40, 72-78, 81, 90 and 92, thereby rendering their rejection moot. On page 4 of the Office Action, the Examiner states that the specification is enabling for using a process for eliciting an immune response in a mammal.

Applicant amends independent Claims 1 and 59 to recite a method of inducing or maintaining an immune response a Group B β -hemolytic *Streptococci* ("GBS") toxin receptor. Applicant asserts that the amendments overcome the rejection of Claims 1, 4, 15, 16, 59-61, 64, 89 and 91. Applicant asserts that the claims are enabled and requests withdrawal of the rejection of these claims as not complying with the enablement requirement under 35 U.S.C. §112, first paragraph.

The Examiner rejects Claims 1, 4, 15, 16, 31, 33-38, 40, 59-61, 64, 72-78, 81 and 89-92, asserting that they are directed to a genus of structurally and/or functionally disparate polypeptides, which is not adequately described in the specification, as filed, to satisfy the written description requirement. Applicant cancels Claims 31, 33-38, 40, 72-78, 81, 90 and 92, thereby rendering their rejection moot.

Applicant amends independent Claims 1 and 59 to clarify the properties of the genus of the polypeptides recited in the claims. Applicant asserts that the amendments overcome the rejection of Claims 1, 4, 15, 15, 16, 59-61, 64, 89 and 91. The amended claims contain the subject matter which was described in the specification in such a way as to reasonably convey to of ordinary skill in the art in the area of the present application that the inventor, at the time the application was filed, possessed the claimed invention. Applicant asserts that the pending claims satisfy the written description requirement and requests withdrawal of the rejection of these claims as not complying with the written description requirement under 35 U.S.C. §112, first paragraph.

Rejection of Claims under 35 U.S.C. 102(e)

The Examiner rejects Claims 31-38, 40, 72-78, 81, 90 and 92 in view of U.S. Patent No. 6,803,448. In this Response, applicant cancels the rejected claims, thereby rendering the rejection moot. Applicant requests withdrawal of the rejection

The Examiner states that, in the Response filed August 14, 2007, applicant traversed the rejection. Applicant brings to the Examiner's attention that the rejection of claims under 35 U.S.C. 102(e) was not traversed in the August 14, 2007 Response. In

that Response, applicant overcame the rejection stated in the prior Office Action by amending into independent form Claim 35, which the Examiner did not reject, and by amending Claims 31, 33, 37, 38, 40, 41, 45 and 46 to depend on Claim 35.

Rejection of Claims under the Judicially Created Doctrine of Obviousness-Type Double Patenting

The Examiner rejects Claims 31, 35, 38, 40, 72, 73, 78, 81 90 and 92 under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-11 of the commonly assigned U.S. Patent No. 6,803,448. Applicant asserts that the Terminal Disclaimer submitted with this Response overcomes the rejection and requests its withdrawal.

The Examiner states that, in the Response filed August 14, 2007, applicant traversed the rejection. Applicant brings to the Examiner's attention the rejection was not traversed in the August 14, 2007, Response. In that Response, applicant overcame the rejection stated in the prior Office Action by amending into independent form Claim 35, which the Examiner did not reject, and by amending Claims 31, 33, 37, 38, 40, 41, 45 and 46 to depend on Claim 35.

Addressing the Examiner's inquiry with regard to the common ownership of the present application and U.S. Patent No. 6,803,448, applicant submits that they were commonly owned at the time the invention claimed in the present application was made.

CONCLUSION

The foregoing is submitted as a full and complete response to the communication mailed March 3, 2008. No additional fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required or credit any overpayment to Deposit Account Number 11-0855.

Applicant asserts that the claims are in condition for allowance and respectfully request that the application be passed to issuance. If the Examiner believes that any informalities remain in the case that may be corrected by Examiner's amendment, or that there are any other issues which can be resolved by a telephone interview, a telephone call to the undersigned agent at (404) 815-6102 is respectfully solicited.

Respectfully submitted,

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